IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

MFA.No. 1630 of 1996()

WCC.181/1991 of COMMISSIONER FOR WORKMEN'S COMPENSATION SECRETARY, STATE ADVISORY CONTRACT LABOUR BOARD, TRIVANDRUM .
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APPELLANT: IST OPPOSITE PARTY.

AR.GOPALAKRISHNAN NARI,
CHITRA, THUNDUVILA VEEDU,
ERAPPAKUZHY, KUDAPPANAKUNNU P.O.,
TRIVANDRUM.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS: APPLICANT AND 2ND & 3RD OPPOSITE PARTIES.
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1. **THE COMMISSIONER FOR WORKMEN'S COMPENSATION, TRIVANDRUM.**

2. **SURESH BABU, PUTHUVAL PUTHEN VEEDU, KOOLYOTHUYKONAM, KUNNUMPURAM, ERAPPUKUZHY, KUDAPPANAKKUNNU P.O. TRIVANDRUM (DIED).**

3. **MOHANAN, S/O. APPUPANICKER, AMBAZHAMKODE, KUDAPPANAKKUNNU, THIRUVANANTHAPURAM.**

4. **LAWRANCE D., CHRIST NILAYAM, PEYAD P.O., THIRUVANANTHAPURAM.**

tss

M.F.A. NO.1630/1996

ADDL.RESPONDENTS 5 AND 6 IMPLEADED.

5. SMT.V.BINDU, W/O.SURESH BABU,
PUTHUVAL PUTHENVEEDU,
KOOLYOTHUKONAM, KUNNUMPURAM
ERAPPAKUZHY, KUDAPPANAKKUNNU P.O.,
THIRUVANANTHAPURAM.

6. V.ATHIRA, MINOR, REP.BY HER
GUARDIAN AND MOTHER SMT. V.BINDU, DO. DO.

ADDL.R5 & R6 ARE IMPLEADED AS LEGAL REPRESENTATIVES OF THE DECEASED 2ND RESPONDENT AS PER ORDER DT. 21.6.05 ON CMP. 1183/02.

BY ADV. SRI.M.RAJAGOPALAN NAIR
GOVERNMENT PLEADER
SRI.G.BIJU
SRI.M.SREEKUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

tss

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.1630 OF 1996

Dated 4th September, 2007

JUDGMENT

Koshy,J.

A loading and unloading worker sustained very serious injuries in an accident occurred during the course of employment. As a result of the accident, his left ankle was injured and finally the leg was amputated as a small stone fell on his leg. The Commissioner, on the basis of medical certificate, assessed compensation for 40% disability. The claimant was aged 19 at the time of the accident. He died after filing of the appeal and subsequently his legal heirs were impleaded. The only question urged in the appeal was that the appellant was not the real employer and third respondent, registered owner of the lorry in which the loading and unloading work was done, was the real employer. The applicant himself as well as the co-worker (AWs 1 and 2) deposed that they were employed by the first opposite party and they were not aware who was the registered owner. But, only when the contention that the appellant was not the registered owner was raised, the third opposite party was impleaded as an additional party. Who is the registered owner of the lorry is not concerned in the Workmen's Compensation Act. The question is who is the employer as the liability to pay compensation is fixed on the employer. It is not disputed that, at the time of the incident,

appellant was present there and supervising the work. Transfer of ownership of vehicle covered by the insurance will not affect statutory liability in Motor Accidents Claims Tribunal's case also as held by the Apex Court in **New India Assurance Co. Ltd.** v. **Rula and others** (AIR 2000 SC 1082). In this case, insurance company did not adduce any evidence. It also did not produce the policy to disclose exemption. Considering the evidence of AW1 and AW2 that the applicant was doing loading and unloading work and appellant has actually employed the persons, the Commissioner as a finding of fact held that appellant was the real employer of the parties. The appellant was not able to disprove the same. The above finding of fact arrived at by the Commissioner cannot be stated to be perverse as it cannot be stated that it is not based on evidence. In the above circumstances, there is no substantial question of law involved in this appeal.

The appeal is dismissed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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